

LEGISLATIVE BRANCH
APPROPRIATIONS ACT, 1996

THE SPEAKER PRO TEMPORE:⁽¹⁴⁾ Pursuant to House Resolution 169 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1854. . . .

THE CHAIRMAN: When the Committee of the Whole rose on Wednesday, June 21, 1995, amendment No. 5 printed in House Report 104-146 offered by the gentleman from California [Mr. Fazio] had been disposed of.

DE NOVO VOTE ON AMENDMENT
OFFERED BY MR. FAZIO OF
CALIFORNIA, AS AMENDED

THE CHAIRMAN: Pursuant to the order of the House today, the Chair will now put the question de novo.

The question is on the amendment offered by the gentleman from California [Mr. Fazio], as amended.

MR. FAZIO of California: Mr. Chairman, I ask unanimous consent that the gentleman from New York [Mr. Houghton] be allowed to speak out of order for 2 minutes in order to underscore and explain the amendment that is about to be voted on.

THE CHAIRMAN: Is there objection to the request of the gentleman from California? . . .

THE CHAIRMAN: All time has expired.

The Chair will now put the question de novo.

The question is on the amendment offered by the gentleman from California [Mr. Fazio], as amended.

The question was taken; and the Chairman announced that he was in doubt.

14. Paul E. Gillmor (Ohio).

RECORDED VOTE

MR. FAZIO of California: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 220, noes 204, not voting 10. . . .

§ 32. Requests To Alter Electronically Recorded Votes

Since the inception of the electronic system, the Speaker has resisted attempts to permit corrections to the electronic tally after the announcement of a vote. This policy is based upon the presumptive reliability of the electronic device and upon the responsibility of each Member to correctly cast and verify his vote. The Speaker has continued to entertain Members' unanimous-consent requests to correct the Record the day after the announcement of the result where the electronic voting system has been inoperative and a backup procedure—where the possibility of human error still exists—was utilized.

Votes or Presence Cannot Be Entered After Vote Has Been Closed and Result Announced

§ 32.1 Following the announcement of the result of a call of

the House conducted by electronic device pursuant to the rules, the Speaker declined to entertain requests by Members to record their presence.

On Nov. 13, 1973,⁽¹⁵⁾ Mr. Spark M. Matsunaga, of Hawaii, by direction of the Committee on Rules, called up a resolution (H. Res. 695) which provided that upon its adoption, the House would resolve itself into the Committee of the Whole to consider a bill (H.R. 11333) providing for certain increases in social security benefits among other things.

During debate on the resolution, Mr. Steven D. Symms, of Idaho, made the point of order that a quorum was not present. The Speaker⁽¹⁶⁾ sustained the point of order and a call of the House was ordered and taken electronically.⁽¹⁷⁾

When 373 Members responded to the call, the Speaker announced the presence of a quorum. Unanimous consent was then granted to dispense with further proceedings under the call. Prior to the further consideration of the matter at hand, however, a

colloquy took place between the Speaker and a Member as to the failure of the latter to be recorded on the quorum call.

This discussion, which appears in its entirety below, illustrates the Speaker's obligation to decline a Member's request to be recorded after the Chair has already announced the result of a quorum call conducted by electronic means. The exchange⁽¹⁸⁾ took place as follows:

MR. [JOHN W.] DAVIS of Georgia: Mr. Speaker, I had my hand up and I was in the Chamber on this past rollcall, but I was not recorded.

THE SPEAKER: The gentleman's statement will appear in the Record.

The Chair under the present practices of the House is without authority to change the vote or announcement of a quorum after the result is announced.

MR. DAVIS of Georgia: I had my hand up, Mr. Speaker.

THE SPEAKER: The Chair apologizes if he did not see the gentleman, but the Members make their presence known by addressing the Chair. This is the only manner in which the Chair has a right to recognize a Member.

MR. DAVIS of Georgia: Mr. Speaker, that is the manner this Member followed.

THE SPEAKER: Did the gentleman take the microphone and address the Chair?

MR. DAVIS of Georgia: No. I did not take the microphone. I was in the

15. 119 CONG. REC. 36862, 93d Cong. 1st Sess.

16. Carl Albert (Okla.).

17. See Rule XV clause 5, *House Rules and Manual* § 774(b) (1995).

18. 119 CONG. REC. 36862, 36863, 93d Cong. 1st Sess.

Chamber. I do not know of any rule that requires the Member to take a microphone.

THE SPEAKER: The gentleman must address the Chair.

MR. DAVIS of Georgia: I did.

THE SPEAKER: The Chair went 3 minutes beyond the 15-minute minimum time. The Chair does not have the authority to recognize the gentleman to make this request.

MR. DAVIS of Georgia: There is no rule.

THE SPEAKER: The precedent has been established with respect to numerous Members of the House under both the old rollcall system and the new electronic system. The gentleman can state that he was present and the House knows the gentleman was present and his statement will appear immediately following the announcement of the Members recorded as present.

MR. DAVIS of Georgia: Mr. Speaker, is there anything in the rules about a microphone?

THE SPEAKER: It is only for the purposes of facilitating the action of the House, that is all, so that the Chair will see Members, but the Chair looked around the Chamber before announcing the result.

MR. DAVIS of Georgia: I will state this Member had his hand up.

THE SPEAKER: The gentleman's remarks will appear in the Record.

MR. DAVIS of Georgia: That is not important, I was in the Chamber. I tried to answer the roll.

Mr. Speaker, I will not be intimidated by regular order requests. I was in the Chamber.

THE SPEAKER: The gentleman's remarks that he was in the Chamber,

that he was holding up his hand in the Chamber, that he was seeking recognition of the Chair, will appear in the Record; but the gentleman cannot be recorded, nor can any other Member, under the practices of this House, if he is not recorded before the vote or rollcall is announced. The Chair has announced this policy on numerous occasions—including April 18, May 10, and June 6 of this year.

The Chair is bound by those rulings and the Chair is going to stand by this ruling, unless overruled by the House. The gentleman's statement will appear in the Record.

§ 32.2 The Speaker has declined to entertain unanimous-consent requests to correct the Record and the Journal on votes taken by electronic device.

On May 10, 1973,⁽¹⁹⁾ following the Speaker's⁽²⁰⁾ appointment of five Members to confer with Senate conferees as to the Airport Development Acceleration Act of 1973 (S. 38), Mr. Ray J. Madden, of Indiana, rose to make a personal announcement.

Mr. Madden's announcement and the Speaker's reply indicate the Speaker's lack of discretion to correct what a Member deems to be an improperly recorded vote when the vote was tallied by elec-

¹⁹ 119 CONG. REC. 15282, 93d Cong. 1st Sess.

²⁰ Carl Albert (Okla.).

tronic means. The exchange was as follows:

MR. MADDEN: Mr. Speaker, on roll-call No. 132, yesterday, I was present and voted "no." I ask unanimous consent that the permanent Record be corrected accordingly.

THE SPEAKER: The Chair is without authority in that regard. The gentleman's statement will appear in the Record.

Absent Member Somehow Recorded; Record Corrected

§ 32.3 Instance where the permanent Record and Journal were corrected to show that a Member recorded on a series of votes taken by electronic device was in fact not present and not voting.

In the 95th Congress, a Member who was in fact absent and not voting on the preceding day, but was somehow shown as voting, asked to have the permanent record corrected to show that he was in fact not present. His absence was conclusively shown by travel documents and other evidence placing him in his district. His voting card had been misplaced and somehow had been used in error. The Member was issued a new voting card and the old card voided so the system would not accept it if another use of the card was attempted.

The permanent Record and Journal were corrected to indicate that the Member, Mr. James A. Burke, of Massachusetts, was indeed absent as indicated by an excerpt from the Sept. 19, 1978,⁽¹⁾ Record:

[ROLL No. 796]

YEAS—396

Abdnor
Addabbo
Akaka . . .

NAYS—3

Collins, Tex.
McDonald
Symms

NOT VOTING—33

Ammerman
Armstrong
Burke, Calif.
Burke, Mass. . . .

§ 32.4 Based upon the presumed infallibility of the electronic voting system, the Chair will not entertain a unanimous-consent request to correct a roll call vote by electronic device absent a conclusive explanation of the voting discrepancy.

On July 31, 1979,⁽²⁾ a Member asked to proceed for one minute

1. 124 CONG. REC. 30195, 95th Cong. 2d Sess.

2. 125 CONG. REC. 21659, 21660, 96th Cong. 1st Sess.

and during that presentation asked “unanimous consent that the permanent Record reflect the fact that” he was absent on the preceding day and did not in fact vote as indicated in the Record. This request was interpreted by the Speaker, not as an attempt to change the vote, but as a request to put the current statement in the Record. The Member making the request, Mr. Morgan F. Murphy, of Illinois, who was a member of the Committee on Standards of Official Conduct, asked that committee to investigate the occurrence and stated that during such an inquiry, he would recuse himself from committee activity while the matter was under investigation.⁽³⁾

§ 32.5 On one occasion, the Speaker announced a change in the result of an electronic roll call where the error was attributed to an incorrect reading of a signature on a voting card submitted in the well.

At the conclusion of a roll call vote taken by electronic device, Members who do not have their

voting card or who arrive in the Chamber after the electronic device has been closed, may use red or green or orange “tally cards,” which they procure and sign at the rostrum and submit to the tally clerk. Signatures on these cards are sometimes difficult to decipher.

On June 9, 1981, a vote was taken on passage of H.R. 3462, making appropriations for the Department of Justice, fiscal year 1982.

On June 11, 1981, Speaker Thomas P. O'Neill, Jr., of Massachusetts, made the following statement which appeared in the daily edition of the Record:

THE SPEAKER: The Chair will announce that on rollcall No. 70 the following corrections will be made: The gentleman from Arkansas (Mr. Alexander) to be recorded as not voting and the gentleman from Ohio (Mr. Ashbrook) to be recorded as voting “nay.”

This correction is required because of an error in correctly identifying a signature on a voting card submitted in the well.

The permanent Record was accordingly corrected.

Unanimous consent was not required for this change, since the error was clerical and not attributable to the electronic system, which has continued to retain its reputation for infallibility. The

3. The Committee on House Administration also undertook an inquiry into the voting errors here noted. 125 CONG. REC. 21986, 21987, 96th Cong. 1st Sess., Aug. 1, 1979.

Journal and voting records were also corrected to conform to this announcement.

§ 33. Demand for Vote

While the mechanics of taking a recorded vote by electronic device are the same as those required for taking a vote by the yeas and nays, the process for ordering the two votes is different. The demand for the yeas and nays is constitutional in origin⁽⁴⁾ while the recorded vote is a creature of the House rules.⁽⁵⁾ While the yeas and nays are in order only in the House, a recorded vote can be demanded both in the House and in the Committee of the Whole.⁽⁶⁾ The yeas and nays are ordered by one-fifth of those present (so if only ten Members are in attendance, two can order the yeas and nays) whereas one-fifth of a quorum (44 in the House) is required to get a recorded vote. In Committee of the Whole, the number for a recorded vote is fixed by rule.⁽⁷⁾ Originally set at one-fifth of a quorum (20 in Committee), the requirement for a second was

changed in the 96th Congress to the fixed number of 25.⁽⁸⁾

In the House, a demand for a recorded vote can be made following a demand for the yeas and nays which does not receive a sufficient second. But where a vote is taken in the House by one method and concluded, either positively or negatively, the other method can no longer be demanded.⁽⁹⁾ Where, on the other hand, an amendment is adopted by a recorded vote in Committee of the Whole, and is reported back to the House where it is subject to a demand for a "separate vote," that separate vote can be concluded by either a recorded vote or the yeas and nays.

Single-Step Demands; Nonelectronic "Backup" Procedure

§ 33.1 In the 92d Congress, the rules were amended to pro-

4. U.S. Const. art. I, §.5.
5. Rule I clause 5(a); Rule XXIII clause 2(b), *House Rules and Manual* §§ 629 and 864 (1995).
6. *Id.*
7. *Id.*

8. Rule XXIII clause 2(b), *House Rules and Manual* § 864 (1995).
9. See Rule I clause 5(a), *House Rules and Manual* § 629 (1995), as amended by H. Res. 5, 105th Cong. 1st Sess., Jan. 7, 1997. The following sentence was added to Rule I clause 5(a): "A recorded vote taken pursuant to this paragraph shall be considered a vote by the yeas and nays." This amendment was inserted to prevent an issue decided by a recorded vote from being revisited by a demand for the yeas and nays on the same question.